IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3222 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LAXMIBEN SETHIA CHARITABLE TRUST

Versus

VEDANAND JHA COMMISSIONER OF INCOME TAX

Appearance:

1. Special Civil Application No. 3222 of 2001
MR BD KARIA for MR RK PATEL for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 15/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

The petitioner is a charitable trust, which has been aggrieved by an order dated 12.4.2001 passed by the respondent, whereby an approval under the provisions of sec. 80G(5) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') for the period commencing from 1.4.2000, has been refused.

2. The facts giving rise to the petition, in a nutshell, are as under :

2.1 The petitioner is a public charitable trust registered under the provisions of Bombay Public Trusts Act, 1950 and also under the provisions of sec. 12A(a) of the Act.

2.2 When the petitioner had made a request for renewal of certificate under the provisions of sec. 80G(5) of the Act, it was found by the respondent that the petitioner trust had invested a sum of Rs.6 lakhs with M/s. DCM Financial Services Ltd. by subscribing to debentures/bonds of the aforesaid company. It was found by the respondent that the investment, which had been made by the petitioner, was not in accordance with the provisions of sec. 11(5) of the Act. As the respondent came to the conclusion that the petitioner trust had violated the provisions of sec. 11(5) of the Act in the matter of making investments of the trust funds, the respondent refused to grant approval under sec. 80G(5) of the Act by virtue of the impugned order dated 12th April.

3. Learned advocate Shri B.D. Karia has appeared for the petitioner trust whereas Sr. Standing Counsel Shri M.R. Bhatt has appeared for the respondent.

4. Learned advocate Shri Karia appearing for the petitioner has submitted that the impugned order is unjust and improper in view of the law laid down by his court in the case of N.N. Desai Charitable Trust v. CIT, 246 ITR 452. It has been also submitted by him that the judgment delivered in the said case has been also followed in the case of Orpat Charitable Trust v. CIT, 256 ITR 690. It has been submitted by him that the respondent could not have refused to issue the approval on the ground that the amount of the trust was not invested in accordance with the provisions of sec.11(5) read with sec. 13(1)(d) of the Act. It has been submitted by the learned advocate that the said factor

could have been considered by the Assessing Officer at the time of assessment of income of the petitioner trust at the relevant time, but the said reason could not have been a ground for refusal of an approval under the provisions of sec. 80G(5) of the Act. He has taken us through the aforesaid two judgments so as to substantiate his submissions.

5. Lastly, it has been submitted by learned advocate Shri Karia that during the pendency of the petition, the concerned trustee of the trust has paid a sum of Rs. 8 lakhs to the petitioner trust so as to compensate the trust. It has been submitted by him that though the amount, which had been invested by the trust, would be returned by the company, for sake of abundant caution, not only the principal amount of Rs. 6 lakhs, but an amount of Rs. 2 lakhs, which the trust would have received by way of interest, has also been paid by the concerned trustee to the petitioner trust. It is an admitted fact that a sum of Rs. 8 lakhs has been given by the trustee to the petitioner trust. A receipt executed by the petitioner trust to that effect has been placed on record by the learned advocate.

6. Thus, it has been submitted by him that no loss of whatsoever type has been caused to the petitioner trust even if it is presumed that the amount was invested in violation of the provisions of sec. 11(5) of the Act.

7. On the other hand, Sr. Standing Counsel Shri Manish Bhatt appearing for the respondent has submitted that the impugned order passed by the respondent is just, legal and proper. It has been submitted by him that it was the duty of the petitioner trust to invest its funds in accordance with the provisions of sec. 11(5) of the Act. According to his submission, if the trust is not making its investments in a careful and proper manner as per sec. 11(5) of the Act, the trust must suffer the consequences. Of course, he has very fairly submitted that the ratio laid down in the judgments referred to hereinabove would apply to this case and it was not possible for him to distinguish this case from the cases covered by the said judgments.

8. We have heard the learned advocates and have also considered the judgments referred to hereinabove and the facts of the case.

9. Upon perusal of the judgments referred to hereinabove, it is crystal clear that if a trust has not invested its funds as per sec. 11(5) of the Act, the

trust cannot be refused approval under the provisions of sec. 80G(5). Looking to the facts of the case, in our opinion, it is very difficult for the respondent to distinguish the judgments referred to hereinabove and in our opinion the ratio of the judgments referred to hereinabove would squarely apply to the facts of the case on hand.

10. As stated hereinabove, looking to the law laid down in the aforesaid two judgments delivered by this court, it is not open to the respondent to refuse grant of approval under the provisions of sec. 80G(5) of the Act. As the law has been discussed at length in the aforestated two judgments, we do not think it necessary to reiterate the settled legal position. We, therefore, direct the respondent to issue approval under the provisions of sec. 80G(5) to the petitioner trust for the period commencing from 1.4.2000 to 31.3.2002. The said direction has been given for the reason that the learned advocate appearing for the petitioner has submitted that the petitioner trust has already been given approval for the period commencing from 1.4.2002 to 31.3.2005 during the pendency of this petition.

11. In view of what has been stated hereinabove and in the light of the judgments delivered in the case of N.N. Desai Charitable Trust (supra), the petition is allowed. The impugned order dated 12.4.2001 is hereby quashed and set aside and the respondent is directed to give approval under the provisions of sec. 80G(5) of the Act for the period commencing from 1.4.2000 to 31.3.2002 immediately.

The petition thus stands disposed of as allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(A.R. Dave, J.)

(A.M.Kapadia, J.)

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